

EXPRESS MAIL NO. EV529790184US

**TRANSMITTAL
FORM**(To be used for all correspondence
after initial filing)

Application Number	10/798,714
Filing Date	March 10, 2004
First Named Inventor	Emerson R. Gallagher
Art Unit	1746
Examiner Name	
Attorney Docket No.	130109.486

ENCLOSURES (check all that apply)

- | | | |
|---|--|---|
| <input type="checkbox"/> Fee Transmittal Form | <input type="checkbox"/> Drawing(s) | <input type="checkbox"/> After Allowance Communication to TC |
| <input type="checkbox"/> Fee Attached | <input type="checkbox"/> Request for Corrected Filing Receipt | <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences |
| <input type="checkbox"/> Amendment/Response | <input type="checkbox"/> Licensing-related Papers | <input type="checkbox"/> Appeal Communication to TC (<i>Appeal Notice, Brief, Reply Brief</i>) |
| <input type="checkbox"/> After Final | <input type="checkbox"/> Petition | <input type="checkbox"/> Proprietary Information |
| <input type="checkbox"/> Affidavits/declaration(s) | <input type="checkbox"/> Petition to Convert to a Provisional Application | <input type="checkbox"/> Status Letter |
| <input type="checkbox"/> Extension of Time Request | <input type="checkbox"/> Power of Attorney, Revocation, Change of Correspondence Address | <input checked="" type="checkbox"/> Return Receipt Postcard |
| <input type="checkbox"/> Express Abandonment Request | <input type="checkbox"/> Declaration | <input checked="" type="checkbox"/> Other Enclosure(s) (<i>please identify below</i>): |
| <input type="checkbox"/> Information Disclosure Statement and Transmittal | <input type="checkbox"/> Statement under 37 CFR 3.73(b) | <ul style="list-style-type: none">▪ Copy of Decision▪ Copy of Notice of Acceptance of Publication Request▪ Copy of Notice to File Missing Parts |
| <input type="checkbox"/> Cited References | <input type="checkbox"/> Terminal Disclaimer | |
| <input type="checkbox"/> Certified Copy of Priority Document(s) | <input type="checkbox"/> Request for Refund | |
| <input checked="" type="checkbox"/> Response to <i>Second</i> Missing Parts under 37 CFR 1.52 or 1.53 | <input type="checkbox"/> CD, Number of CD(s) _____ | |
| <input type="checkbox"/> Response to Missing Parts/Incomplete Application | <input type="checkbox"/> Landscape Table on CD | |

Remarks**SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT**

Firm Name	Seed Intellectual Property Law Group PLLC	Customer Number	00500
Signature			
Printed Name	Emily W. Wagner		
Date	June 9, 2006	Reg. No.	50,922

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below.

Signature	~~ Sent via Express Mail ~~		
Typed or printed name		Date:	

SEND TO: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
789149_1.DOC



PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants : Emerson R. Gallagher et al.
Application No. : 10/798,714
Filed : March 10, 2004
For : FUEL CELL STACKS OF ALTERNATING POLARITY
MEMBRANE ELECTRODE ASSEMBLIES

Art Unit : 1746
Docket No. : 130109.486
Date : June 9, 2006

Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

RESPONSE TO SECOND NOTICE TO FILE MISSING PARTS OF
NONPROVISIONAL APPLICATION

Commissioner for Patents:

Applicants respectfully request that the second Notice to File Missing Parts, dated April 12, 2006 ("Second Notice") be withdrawn based on the following:

On June 1, 2004, the U.S. Patent and Trademark Office (PTO) mailed a first Notice to File Missing Parts ("First Notice") for the above-identified application.

On July 28, 2004, Applicants filed their Response to Missing Parts of Nonprovisional Application ("First Response") to the First Notice with all required documents and fees. Enclosed with that First Response was an Information Disclosure Statement ("IDS"). The IDS had as an enclosure only one cited reference, Reference No. AE (Application No. 10/661,033¹).

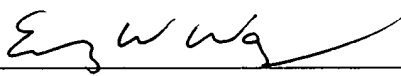
¹ This application number was incorrectly cited on the IDS. The correct application number is 10/661,093. We filed a Petition to convert to a provisional application on September 10, 2004, but a provisional application number has not been assigned yet.

On April 12, 2006, the Patent Office mailed the present second Notice to File Missing Parts ("Second Notice") indicating that Applicants had additional claim fees due for two additional claims. Upon checking on PAIR, Applicants determined that when the Patent Office received the First Response package to the First Notice, the AE Reference was separated by the PTO from the IDS and scanned into the PTO File Wrapper as if it were a substitute specification.

The above-identified application published with the AE Reference specification instead of the specification provided at the time of filing on March 10, 2004. On May 2, 2006, Applicants filed a Request for Corrected Application Publication to correct this error. On May 31, 2006, a Decision was mailed dismissing this request, but conceding to publish *sua sponte* a corrected application publication. A Notice of Acceptance of Publication Request was also mailed. Copies of both the Decision and Notice are attached.

Applicants note that the AE Reference has 22 total claims, whereas the instant application has only 12 total claims. It appears that the Second Notice has been mailed based upon the number of claims in the AE Reference. Accordingly, Applicants respectfully request that the Second Notice be withdrawn and that no fees be required.

Respectfully submitted,
Emerson R. Gallagher et al.
Seed Intellectual Property Law Group PLLC



Emily W. Wagner
Registration No. 50,922

Enclosures:

Decision dated May 31, 2006
Notice of Acceptance of Publication Request

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UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
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www.uspto.gov

IFW

APPLICATION NUMBER	FILING OR 371 (c) DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
10/798,714	03/10/2004	Emerson R. Gallagher	130109.486

00500
SEED INTELLECTUAL PROPERTY LAW GROUP PLLC
701 FIFTH AVE
SUITE 6300
SEATTLE, WA 98104-7092

CONFIRMATION NO. 5017

FORMALITIES
LETTER

Date Mailed: 04/12/2006

NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION**FILED UNDER 37 CFR 1.53(b)***Filing Date Granted***Items Required To Avoid Abandonment:**

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- Additional claim fees of **\$100** as a non-small entity, including any required multiple dependent claim fee, are required. Applicant must submit the additional claim fees or cancel the additional claims for which fees are due.

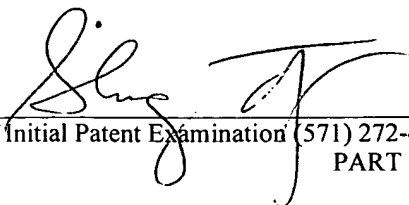
SUMMARY OF FEES DUE:

Total additional fee(s) required for this application is **\$100** for a Large Entity

- Total additional claim fee(s) for this application is **\$100**
 - **\$100** for 2 total claims over 20.

Replies should be mailed to: Mail Stop Missing Parts
Commissioner for Patents
P.O. Box 1450
Alexandria VA 22313-1450

*A copy of this notice **MUST** be returned with the reply.*

A handwritten signature in black ink, appearing to be "Blug J", is written over a horizontal line.

Office of Initial Patent Examination (571) 272-4000, or 1-800-PTO-9199, or 1-800-972-6382
PART 1 - ATTORNEY/APPLICANT COPY



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MAY 31 2006

OFFICE OF PETITIONS

Applicant: Gallagher et al.

Appl. No.: 10/798,714

Filing Date: March 20, 2004

Title: FUEL CELL STACKS OF ALTERNATING POLARITY MEMBRANE ELECTRODE ASSEMBLIES

Attorney Docket No.: 61368-223339

Pub. No.: US 2005/0214863 A1

Pub. Date: September 15, 2005

This is a decision on the request for a corrected patent application publication under 37 CFR 1.221, filed on May 2, 2006, for the above-identified application.

The request is DISMISSED.

The instant request is that the application be republished because the patent application publication contains the contents of another application that was submitted as part of an information disclosure statement.

37 CFR 1.221 (b) is applicable "only when the Office makes a material mistake which is apparent from Office records.... Any request for a corrected publication or revised patent application publication other than provided as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable." A material mistake must affect the public's ability to appreciate the technical disclosure of the patent application publication, to determine the scope of the patent application publication, or to determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent.¹

The request for corrected publication received on May 2, 2006, was not timely filed under 37 CFR 1.221(b).

Due to the nature of the errors in this publication, the office will *sua sponte* publish a corrected patent application publication. The corrected patent application publication will be published in

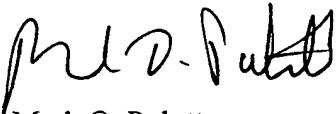
¹Changes to Implement Eighteen-Month Publication of Patent Applications, 65 FR 57023, 57038 (Sept. 20, 2000), 1239, Off. Gaz. Pat. Office Notices 63, 75 (Oct. 10, 2000) (final rule).

due course, unless the application is allowed and the patent issues before the application is republished.

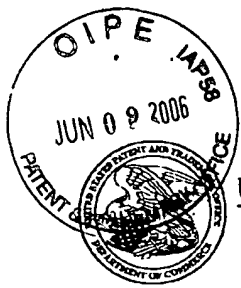
The documents scanned on July 8, 2004, which were improperly indexed as specification, claims and drawings and published have been relabeled as a non-patent literature.

Applicant is reminded that paper copies of pending U.S. Patent Applications are not required for compliance with 37 CFR 1.98. See Waiver of the Copy Requirement in 37 CFR 1.98 for Cited Pending U.S. Patent Applications, 1287, Off. Gaz. Pat. Office Notices 163 (Oct. 19, 2004). The Office had provided a waiver for the former requirement in Sec. 1.98(a)(2)(i) for a copy of each cited U.S. patent or U.S. patent application publication in IDSs submitted in U.S. national patent applications filed after June 30, 2003, and international applications that have entered the national stage under 35 U.S.C. 371 after June 30, 2003, because these applications are stored in electronic form in the Office's IFW system. See Information Disclosure Statements May Be Filed Without Copies of U.S. Patents and Published applications in Patent Applications filed after June 30, 2003, 1273 Off. Gaz. Pat. Office 55 (Aug. 5, 2003).

Inquiries relating to this matter may be directed to Mark Polutta at (571) 272-7709 (voice).



Mark O. Polutta
Office of Patent Legal Administration
Office of the Deputy Commissioner
for Patent Examination Policy



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KRH

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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTY. DOCKET NO./TITLE
10/798,714	03/10/2004	Emerson R. Gallagher	130109.486

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SUITE 6300
SEATTLE, WA 98104-7092

CONFIRMATION NO. 5017



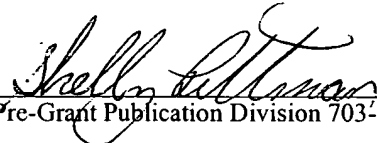
OC000000019025849

Date Mailed: 05/31/2006

NOTICE OF ACCEPTANCE OF PUBLICATION REQUEST

The request for voluntary publication, amended publication, early publication, redacted publication, republication, corrected publication or revised publication has been received for this application. The request, including payment of any necessary fee(s), is in compliance with 37 CFR 1.215, 1.217, 1.219 or 1.221.

The projected publication date is 09/07/2006.


Pre-Grant Publication Division 703-605-4283

PART 1 - ATTORNEY/APPLICANT COPY